



**Building and Development Tribunals**

**Queensland Government**

Department of **Local Government and Planning**

**APPEAL**

*Integrated Planning Act 1997*

**File No. 3-05-059**

## **BUILDING AND DEVELOPMENT TRIBUNAL - DECISION**

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**Assessment Manager:** Caboolture Shire Council

**Site Address:** *withheld* – “the subject site”

**Applicant:** *withheld*

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### **Nature of Appeal**

The appeal is against the decision of the Caboolture Shire Council to refuse an application under its Amenity and Aesthetics Policy for the location of a shipping container on land described as Lot *withheld* and situated at “the subject site”, as Council considers:-

- “*The building or structure, when built will have an extreme adverse affect on the amenity or future amenity of the proposed building’s neighbourhood.*” and
  - *The aesthetics of the building or structure, when built will be in extreme conflict with the character of the proposed building’s neighbourhood”.*
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**Date and Place of Hearing:** 10.00am Tuesday 4 October 2005.  
At “the subject site”.

**Tribunal:**

Mr L F Blumkie	Tribunal Chairperson
Mr P Breeze	Tribunal Member
Ms J Owen	Tribunal Member

**Present:**

<i>withheld</i>	Applicant / Owner
Mr P Chamberlain	Caboolture Shire Council representative
Mr L Blumkie	Tribunal Chairperson
Mr P Breeze	Tribunal Member
Ms J Owen	Tribunal Member

## **Decision**

The Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision appealed against and, with the consent of the owner and the agreement of the council representative, grants a temporary approval for **one** (only) shipping container to remain on site for a maximum period of 12 months from the date of this decision (unless otherwise extended by the Caboolture Shire Council) subject to the following conditions:-

1. Applicant remains the registered owner of the property (Should the property be sold this approval will lapse on the date of sale of the property);
2. A building application for the container is lodged with the Caboolture Shire Council within 1 month of the date of this decision.
3. The container is cleaned and painted in a tradesman like manner, and in a cream colour to match the roof colour of the existing house, within 1 month of the date of this decision.

## **Background**

The property is located in a new rural/residential area. The subdivision is well developed with class 1 and 10 buildings. Many of the properties also have lawn lockers. The majority of the class 10 buildings and lawn lockers are constructed with pre-painted external metal sheeting.

No other shipping containers were observed in the estate other than one, which appeared to be in use, by the contractor, for a house under construction.

Application was made by the Applicant to the Caboolture Shire Council on the 25 August 2005 for consideration under Council's Amenity & Aesthetics Policy to locate a shipping container on the subject property.

Council refused to grant a relaxation on the 1 September 2005 on Amenity and Aesthetic grounds.

The applicant advised at the hearing that before she made the siting application, verbal advice was sought from Council regarding the location of shipping containers on rural/residential properties and was only informed that an application would be necessary under Council's Amenity & Aesthetics Policy.

However, the applicant claims she was **not** informed that containers were unlikely to be approved in **new** rural/residential areas.

Based on this advice, the applicant took advantage of a discounted offer from a shipping container supplier at a recent "Farmfest display" in the area. Provided the container was delivered to her site immediately after the display she would save the transport cost from delivery to Brisbane and return to *withheld*. For this reason the container was delivered to her site before she received the Council's decision.

Council refused the application on the 1 September 2005.

An appeal was lodged with the Registrar on 20 September 2005.

## Material Considered

In coming to a decision, consideration was given to the following material: -

1. Copy of the relaxation application and drawings dated 25 August 2005.
2. Copy of the Decision Notice dated 1 September 2005.
3. Copy of the Appeal Notice dated 20 September 2005.
4. Photographs submitted with the appeal.
5. Verbal submissions from applicant.
6. Verbal submissions from Mr P Chamberlain - Caboolture Shire Council representative.
7. The Standard Building Regulation 1993 (SBR)
8. The Integrated Planning Act 1997
9. The Queensland Development Code (QDC)
10. Caboolture Shire Council Resolution and Policy on Amenity and Aesthetics - Policy No 202/02.

## Findings of Fact

### *A Standard Building Regulation - Division 4 - Amenity and Aesthetics*

Caboolture Shire Council adopted an Amenity and Aesthetics Policy under Section 50(1) of the Standard Building Regulation on 5 September 2000 and amended that policy on 19 February 2002 and again on 17 December 2002.

The resolution, amongst other things, declared that all development applications for Class 1A and 10 Buildings (including shipping containers) proposed to be located within the Caboolture Shire, are to be subject to amenity and aesthetics assessment by the Caboolture Shire Council.

Section 50 (2) of the Standard Building Regulation 1993 states that applications mentioned in Section 50 (1) must be assessed by the local government for the amenity and aesthetics impact of the proposed building work.

Section 50 (3) states that the local government may refuse an application to which subsection (2) applies if the building, when built, would have an **extremely** adverse effect on the amenity or likely amenity of the building's neighbourhood etc.

### *B Site*

The site is 3612m<sup>2</sup> in area and is developed with an existing single storey class 1 building and a shipping container. The shipping container is located approximately 1500mm from the side and rear boundary at the highest corner of the site.

The site is a rectangular shaped lot and slopes towards the street frontage. The house is located towards the rear of the property.

There is limited vegetation (mainly grass) between the container and *withheld* Road and hence the shipping container being located on the highest point of the site is visible from the *withheld* Street frontage.

*C Development in the neighbourhood.*

Development within the neighbourhood is generally single storey class 1 and 10 buildings. The majority of class 10 buildings and lawn lockers are constructed of “colorbond” sheeting. There were lawn lockers similar in size to the container ie about 14m<sup>2</sup> in area – no overhang or windows. However, unlike the shipping container, most lawn lockers had a low-pitched gable roof.

*E Forms of buildings and Council policy*

The local government representative was unable to table a written policy on the forms of buildings, (location and siting of shipping containers) etc which the local government considered acceptable under their amenity aesthetics resolution.

**Reasons for the Decision**

The Council representative was unable to table a written policy on Council’s preferred approach to the location of shipping containers. Section 50.(1) of the Standard Building Regulation 1993 specifically refers to “forms of building” which, in the opinion of the Tribunal, should form part of the Council Resolution. The Council representative was unable to clearly describe the “forms of buildings” the Council is trying to achieve (whether it be for Class 10 buildings or shipping containers).

Unless this information is clearly conveyed to Appeal Tribunals it is difficult to determine if buildings and structures are in **extreme** conflict with the Amenity and/or Aesthetics of the neighbourhood.

Even though Council’s decision on the application referred to the container as being in extreme conflict with the amenity of the neighbourhood, the Council representative was unable to explain how the proposal was in extreme conflict.

With regard to the container being in extreme conflict with the aesthetics of the neighbourhood, the representative was of the view that Council:-

- Preferred not to allow shipping containers in **new** rural/residential areas
- Considered that containers were not durable (due to rust) and required regular maintenance to maintain their appearance and in fact, were more suited to commercial areas.
- A number of containers on adjoining properties would detract from the neighbourhood.

The owner advised that she had another property in England and traveled between the two countries at least once a year. She was due to return to England in 3 weeks time and would return to Australia in approximately July 2006.

The container was urgently required to store furniture and other valuable equipment, whilst she was away, so that the property could be rented in her absence.

It was her intention, when funds become available, to erect a new class 10 building (to replace the shipping container) and to landscape the property including a swimming pool some time within the next 2 years.

The master planning for this work was still under consideration and was unlikely to be finalised before she departed for England in 3 weeks time.

She had no intention of retaining the container once the class 10 building was erected and would now give preference to bringing forward the construction of the Class 10 building.

The Council representative was sympathetic to the needs of the applicant and agreed Council would accept a temporary approval for the structure for a period of 12 months subject to reasonable conditions being applied, including building approval and painting of the structure etc.

The owner understood Council's position with regard to its policy on shipping containers being located in **new** Rural/Residential areas and on that basis was prepared to remove the container in 12 months time.

The Tribunal and Council representative agreed that:-

- Temporary approval for a 12 month period would be acceptable, provided the property remained in the ownership of the applicant;
- The container required painting in a more appropriate colour to be in keeping with the Aesthetics of the neighbourhood.

After discussion the applicant agreed to accept the decision to grant temporary approval for the container, as shown in the application, for a 12 month period subject to conditions outlined above.

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Hence, the Tribunal, in accordance with Section 4.2.34 (2) (b) of the Integrated Planning Act, changes the decision appealed against and, with the consent of the owner and the agreement of the council representative, grants a temporary approval for **one** (only) shipping container to remain on site for a maximum period of 12 months from the date of this decision (unless otherwise extended by the Caboolture Shire Council) subject to the following conditions:-

1. The applicant remains the registered owner of the property (Should the property be sold this approval will lapse on the date of sale of the property);
2. A building application for the container is lodged with the Caboolture Shire Council within 1 month of the date of this decision.
3. The container is cleaned and painted in a tradesman like manner and in a cream colour to match the roof colour of the existing house within 1 month of the date of this decision.

NOTE

The Tribunal emphasized to the Council representative the need for Council to prepare a detailed policy on the “forms of buildings” which they were trying to achieve with their Amenity & Aesthetics Resolution.

This document could then be tabled at hearings on Amenity and Aesthetic Appeals and with this approach, Tribunals would be properly informed on both Amenity and Aesthetics.

The Tribunal was aware that the Department of Local Government and Planning had available a document, which may be of assistance in gaining a better understanding of both Amenity and Aesthetics.

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**Leo F Blumkie**  
**Building and Development**  
**Tribunal Chairperson**  
**Date: 10 October 2005**

## **Appeal Rights**

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

## **Enquiries**

All correspondence should be addressed to:

The Registrar of Building and Development Tribunals  
Building Codes Queensland  
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